

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA; and )  
The States of CALIFORNIA, DELAWARE, )  
FLORIDA, GEORGIA, HAWAII, ) Civil Action No. 09-CV-4264  
ILLINOIS, INDIANA, LOUISIANA, )  
MASSACHUSETTS, MARYLAND, )  
MONTANA, NEVADA, )  
NEW HAMPSHIRE, NEW JERSEY )  
NEW MEXICO, NEW YORK, )  
OKLAHOMA, RHODE ISLAND, )  
TENNESSEE, TEXAS, VIRGINIA, )  
And WISCONSIN and the )  
DISTRICT OF COLUMBIA, ex rel. )  
AMY BERGMAN and )  
AMY BERGMAN, individually, )  
Plaintiffs, )  
v. )  
ABBOTT LABORATORIES, )  
Defendants )

**STATE OF FLORIDA'S STATEMENT OF INTEREST**

The State of Florida (Florida) files this Statement of Interest to correct statements made by Abbott Laboratories (Abbott) in Defendant's Motion to Dismiss filed on November 9, 2012 in the above captioned case and in its accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss (Memorandum of Law) regarding the proper statement and legal interpretation of the Florida law on Limitations of False Claims Actions, cited at chapter 68.089 of the Florida Statutes.

Florida retains an interest in this matter, even though it has declined to intervene, because Florida is entitled to a portion of any proceeds of the litigation diverted from the Florida Medicaid Program and because Florida has an ongoing interest in ensuring consistent and correct interpretation of Florida Statutes. Florida respectfully submits the following position:

**1. The Memorandum of Law Does Not Accurately State the Florida Law in its Entirety**

Referring to Florida Statute §68.089(1) amongst other state laws, the Defendant asserts “the state statutes upon which Relator relies are generally subject to six year statutes of limitation that are not conditioned on the discovery or knowledge of false claims but instead act as absolute bars. Accordingly, eighteen of the twenty-five state counts are barred to the extent they are based on conduct occurring before September 18, 2003 (six years from the date Relator first filed her suit):....” Memorandum of Law at 62. These statements are misleading as to Florida as they ignore the rest of the statute at issue.

The exact language of the entire statute states:

“A civil action under this act may not be brought: (1) More than 6 years after the date on which the violation of s. 68.082 is committed; or (2) More than 3 years after the date when facts material to the right of action are known by the state official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.” (Florida Statutes §68.089).

By ignoring the second half of Florida’s law on Limitations on Actions in cases brought under the Florida False Claims Act, Abbott has made a representation to this Court that any claims prior to 2003 are barred *without exception* under Florida’s own laws. In the literal language of the statute, any claims arising more than three years *after* the material facts are known to the state official charged with responsibility to act are barred. While it is true the Relator initially filed her complaint in 2009, the complaint was under seal. It was not until January 2012 that the seal was lifted to provide notice and a copy of both the complaint and the

amended complaint to the states. Since Florida was not aware of the facts material to the action until January 2012, a reasonable interpretation most favorable to Florida would imply the State should not be barred from bringing a civil action in this case on any of the claims until January 2015.

A single case specifically cites Florida's statute for limitations on False Claims actions. In *U.S. ex rel. Foster v. Bristol-Myers Squibb Co.*, 587 F.Supp. 2d 805 (E.D. Tex., 2008), the Defendant moved to dismiss the Relator's complaint along with State and Federal claims. While the District Court for the Eastern District of Texas chose to agree with the Defendant and cited the six year limitation in Florida Statutes § 68.089(1), the opinion has been negatively referenced and is merely persuasive, not controlling, in the present Court. No other state or federal court opinions address time limitations on actions brought under Florida's False Claims Act with such specificity, and a single opinion in which only half of the statute is cited should not be the basis for a ruling by this Court.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of January 2013, a true and correct copy of the foregoing *State of Florida's Statement of Interest* was filed and served via electronic case filing (ECF) upon all counsel of record who have consented to electronic service and that it is available for viewing and downloading from the ECF system. I further certify that if any party has not consented to electronic service, that a true and correct copy was served upon them by first class mail, postage prepaid as follows:

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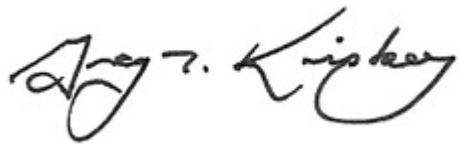
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